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COVID-19 ADVISORY

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RECENT UPDATES TO THE PAYCHECK PROTECTION PROGRAM

BACKGROUND

On March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security Act of 2020 (the "**Cares Act**") into law. The Paycheck Protection Program (the "**PPP**"), one of the CARES Act's featured relief programs, is a loan guarantee program administered by the United States Treasury (the "**Treasury**") and Small Business Administration (the "**SBA**") through which financial institutions can make forgivable loans of up to $10,000,000 to small business concerns, business concerns with fewer than 500 employees, and certain other eligible borrowers.

INTERIM FINAL RULE ON DISBURSEMENTS

On April 28, 2020, the Treasury released its sixth Interim Final Rule regarding disbursements of PPP loans, specifying that a borrower may not take multiple draws from a PPP loan and thereby delay the start of the eight-week covered period (i.e., lenders must make one-time, full disbursement of PPP loans within ten calendar days of loan approval).

The Treasury also included transition rules for loans that received an SBA loan number prior to April 28, 2020, but which have not yet been fully disbursed: (i) the ten calendar-day period for disbursement began on April 28, 2020, and (ii) the eight-week covered period began on the date of first disbursement. Loans that have not been disbursed because of a borrower's failure to submit required documentation within twenty days of the loan approval shall be cancelled by the lender. A loan is considered approved when the loan is assigned a loan number by SBA.

Additionally, the SBA will make available a specific SBA Form 1502 on which PPP lenders will report on PPP loans and collect processing fees on fully-disbursed loans. Lenders must electronically upload SBA Form 1502 within twenty calendar days after a PPP loan is approved or, for loans approved before availability of the updated SBA Form 1502, by May 18, 2020.

TREASURY AND SBA REVIEW OF CERTAIN LOANS

On April 28, 2020, Treasury Secretary Steven T. Mnuchin and SBA Administrator Jovita Carranza issued a statement, confirmed in an April 29, 2020 addition to the **PPP Frequently Asked Questions** ("**FAQ**"), regarding review of certain loans under the PPP. In order to further ensure PPP loans are limited to eligible borrowers, the SBA will review all loans in excess of $2 million, in addition to certain other loans as appropriate, following the lender's submission of the borrower's loan forgiveness application.

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The guidance suggests that the SBA will review applications with respect to the accuracy of a borrower's certification that "[c]urrent economic uncertainty makes this loan request necessary to support the ongoing operations of the Applicant." The outcome of the SBA's review will not affect the SBA's guarantee of any loan for which lenders complied with the lender obligations outlined in the PPP rules. Additional regulatory guidance implementing the review and loan forgiveness procedures are forthcoming.

UPDATED FAQ RE: CHANGES IN OWNERSHIP AND PPP ELIGIBILITY

On April 29, 2020, the SBA updated the FAQ to clarify eligibility for applicants that have undergone a change in ownership after February 15, 2020. Under the guidance, so long as a business was in operation on February 15, 2020 and meets the other eligibility criteria, the business is eligible to apply for a PPP loan despite a change in ownership.

Additionally, where an acquiring business (the "**Acquiror**") purchases substantially all the assets of a business that was in operation on February 15, 2020 (the "**Target**"), the Acquiror is eligible to apply for a PPP loan even if the change in ownership results in the assignment of a new tax ID number and even if the Acquiror was not, itself, in operation until after February 15, 2020.

The Acquiror may rely on the historic payroll costs and headcount of the Target for the purposes of its PPP application so long as it has maintained the operations, headcount and payroll of the Target, except where the Target has already applied for and received a PPP loan. This guidance is consistent with earlier guidance that an applicant may only apply for and obtain one PPP loan.

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